The Solicitors' Journal

VOL. 90 — Saturday, February 16, 1946 — No. 7

CONTENTS

CURRENT TOPICS

Judges of the International Court

THE choice of Sir ARNOLD MCNAIR, K.C., as the United Kingdom representative to sit on the bench of the International Court of Justice will meet with universal approval. Sir Arnold will sit with fourteen other judges, each representing a different country. He has a splendid record of public service. From 1916 to 1918 he was Secretary of the Coal Conservation Committee, and in the following two years he was Secretary of the Advisory Board of the Coal Controller, Secretary of the Imperial Mineral Resources Bureau, and Secretary of the Sankey Coal Commission. In 1942–43 he was a member of Lord Greene's Board of Investigation into Miners' Wages, and in the same period was Chairman of Committee on Supply and Training of Teachers and Youth Leaders. He was Reader in International Law in London University in 1926–27 and Whewell Professor of International Law in 1935–37. He has been Professor of International Law at the Hague Academy of International Law three times, in 1928, 1933 and 1937. He is also a member of the Law Revision Committee.

Solicitors' Remuneration and the Agricultural Mortgage Corporation

REPRESENTATIONS made last year by the Council of The Law Society to the Agricultural Mortgage Corporation have resulted in an increase of 33⅓ per cent. in the scale of fees paid by the Corporation to solicitors acting for them in respect of loans. The new charges operate as from 1st January, 1946, and, as the January issue of the *Law Society's Gazette* points out, they represent the first increase in the scale since it was fixed in 1935. The new scales are £4 4s. for loans up to £250, £5 12s. for loans from £251 to £500, £7 for loans from £501 to £750, and £8 8s. for loans from £751 to £1,000, and thereafter a further fee of 14s. for each £500 (or part thereof) of loans up to a maximum of £35. The new fees are intended to cover the examination of the good and marketable title submitted by the borrower and the completion of the loan. The *Gazette* states it is understood that in cases of special difficulty, and in cases where the loan exceeds £20,000, the Corporation are willing to consider making special arrangements as to costs. The Corporation are further prepared to pay the out-of-pocket cost of the searches, but any expenses relative to the production of deeds, the reconveyance of existing mortgages, the clearing up of outstanding points or the completion of the loan out of the district should be paid by the borrower. Another important point made in the announcement in the *Gazette* is that a solicitor acting for the Corporation is also entitled to appropriate charges under the Solicitors' Remuneration Orders and the Solicitors' Remuneration (Registered Land) Orders against any other parties for whom he may be acting in addition to the Corporation.

Delays at the Land Registry

THE Master of the Worshipful Company of Solicitors of the City of London, Mr. H. A. EASTON, deserves the gratitude of the profession for drawing attention, in a letter to *The Times* of 7th February, to what has long been a source of annoyance and serious inconvenience to solicitors and the public. He wrote that the compulsory registration of title to land at the Land Registry has in the past been lauded as providing a simple, cheap and expeditious system for transferring property. He said that the Land Registry is now notifying solicitors who complain of delays in carrying through registration of dealings in land that "at present the time taken to complete registrations which are in order is at least nineteen weeks from the date of receipt," and that applications can only be expedited if the land has been resold or mortgaged, and then on payment of one guinea expedition fee. Mr. Easton wondered what would happen to a private firm which conducted its business in this way. We share that wonder. He asked for an examination by higher authorities into the reasons for a considerable increase in the delay since the cessation of hostilities instead of an improvement as was to be expected as a result of demobilisation. Complaints which have reached this office reveal an inexcusable state of affairs. Shortages of staff are not unfamiliar nowadays outside Government offices and even in solicitors' offices. If solicitors had told their clients, even when staff was at its lowest ebb, that they needed at least nineteen weeks to complete work of this standard of simplicity, clients would no doubt have preferred to take the risk involved in doing their work themselves. There are still delays in issuing certificates of the result of land charges searches, and the extent to which this holds up important business cannot be over-stated. It is, indeed, as the Master said in his letter, a matter for the immediate attention of the authorities.

The National Insurance Bill

A SERIOUS omission from the National Insurance Bill is brought to light in a letter to *The Times* of 7th February, from Mr. P. W. ANTON, Joint General Secretary of the National Federation of Insurance Workers. He wrote that the proposed regulations provided for compensation for loss of employment, or for loss or diminution of emoluments directly attributable to the passing of the Act, for persons who were employed full time by an approved society. No such provisions, however, appeared to be intended for the tens of thousands of insurance agents employed in the carrying

1
LAW LIBRARY

out of the National Health Insurance Acts. Many of these agents, he pointed out, would lose up to one-tenth of their incomes. The mischief, indeed, goes further than this letter would seem to suggest. The Bill (cl. 66) clearly provides that compensation for loss of office be paid only to whole-time employees who are displaced by the new legislation. There is, however, a considerable class of persons who have conducted the secretarial business of friendly and provident societies for remuneration on a part-time basis. Special provision was made in the Local Government Act, 1933, s. 150, and the Fourth Schedule, for compensation for loss of office to part-time local government officials whom that legislation displaced. Many of the part-time officials, whom the present Bill will displace if it passes through Parliament in its present form, have devoted a life time of service to this type of work, and will suffer a serious injustice if they are deprived of a substantial part of their incomes. A very large number of persons is affected, and it is to be hoped that this is a *casus omissus* which can be rectified before the Bill becomes law.

Conversion of Existing Houses

ONE of the most popular of recent H.M. Stationery Office publications has been the report of the sub-committee of the Central Housing Committee on the conversion of existing houses. This is understandable, for it provides the easiest and cheapest way of alleviating the present shortage in dwelling-house accommodation. A survey by five London and nine provincial boroughs was invited by the committee, and it disclosed that out of 673,230 houses, 23,037 empty or not fully occupied houses with a lifetime of twenty years or more were suitable for conversion into self-contained flats or maisonettes, with approximately five rooms each. An equal number was disclosed as suitable for adaptation for use by three or more families. Probably one of the most useful methods of inducing owners to convert houses of this kind would be, as the report suggests, to utilise the power contained in s. 91 (1) (*c*) of the Housing Act, 1936, which empowers a local authority, in the case of conversion of a house into two or more self-contained flats, to make a refund of rates in certain circumstances. Having read and attempted to understand the section, we agree with the report that it is highly involved, and would add that, if it means what we think it means, it needs improvement in the direction of greater relief. The report also refers with approval to the powers of the county court under s. 163 of the Housing Act, 1936, to modify restrictive covenants so as to enable any private dwelling-house to be converted, and also to the provisions in s. 84 of the Law of Property Act, 1925, relating to the modification or discharge of any restrictions on freehold or leasehold property. The procedure under both Acts, the report states, is open to objection on the ground "not only of expense, but because it does not meet all cases, and is complicated, uncertain and protracted." The committee recommend that the applicant should be given the choice of applying in the first instance either to the court or to the planning authority. In the latter case, it is recommended, there should be a right of appeal to the Minister and provision for determining compensation by the official arbitrator. The committee further recommend that a decision in favour of the applicant under s. 163 of the Housing Act, 1936, should not be made dependent on a change in the character of the neighbourhood.

Legal Aid: Reported Proposals

RECENT reports in the Press, bearing all the marks of intelligent anticipation, indicate that the Bill which the Government are about to introduce to provide legal aid for those who cannot afford it, will simply adopt the proposals of the Rushcliffe Committee without modification. All the reports seem to agree that the committee's recommendation of an upper income limit of £420 per annum will be embodied in the Bill. It will be remembered that at the time of its publication, Mr. ARTHUR C. MORGAN, then President of The Law Society, stated that The Law Society and provincial law societies had long drawn attention to the hardships suffered by those whose means slightly exceeded the limits laid down by the rules. The principle of an upper limit of income for this species of legal aid is in itself irreproachable, but there is much room for criticism as to what this limit must be, and no doubt this point will be debated more fully in Parliament at the proper time. Having regard to increases in the cost of living since the upper limit of £200 was introduced by the Poor Persons Rules, and the impossibility of foreseeing what lies ahead in this respect, there is much to be said for a more variable and elastic arrangement which might correspond more closely with the cost of living, in an analogous manner to that in which certain wages are regulated. It appears, further, that in cases in which legal aid is granted fees charged by solicitors and counsel will be 85 per cent. of the normal rates. No criticism of this proposal could be considered valid on practical grounds, for in spite of the fact that scales of remuneration in the legal profession have increased less than those of any other profession in the last half century or more, solicitors and counsel frequently make proper concessions from the full scale of litigation expenses in order to meet necessitous cases. The proposal, if made law, would merely recognise and make more uniform an existing practice. Nor can the reported proposal be criticised to set up panels of solicitors who will provide legal advice for a fee of 2s. 6d., which in some cases will be remitted. Finally, the principle of extending legal aid in criminal cases so as to include the less serious offences will be widely welcomed and the profession and the public will eagerly await details.

Conversion of Temporary War-time Buildings

CIRCULAR 20/46, issued to housing authorities by the Ministry of Health on 22nd January, 1946, explains that if temporary war-time buildings are sited in places where, as far as can be foreseen, temporary housing is likely to be required and to be acceptable to tenants for at least ten years, the buildings may be transferred to local authorities on certain conditions. The plans of conversion will be subject to the approval of the Ministry. The buildings will be handed over free of charge to the local authority, which will, however, purchase the site of the buildings from the Government forthwith at a price to be agreed, which would normally be the cost of the land to the Government. It is open to a local authority to acquire land compulsorily under Pt. V of the Housing Act, 1936, as amended by s. 4 (2) of the Housing (Temporary Accommodation) Act, 1944, even though the land to be acquired may be under requisition, and, by virtue of s. 40 (*c*) of the Requisitioned Land and War Works Act, 1945, where requisitioned land is so acquired, the compensation will be adjusted in accordance with the provisions of Pt. VIII of that Act. It is suggested that a local authority may be able to negotiate with the owner a lease of land which is under requisition, and may prefer to do this instead of acquiring the land. The Minister will consider proposals of this kind in the same way as if the land was purchased, provided that the rent is endorsed by the district valuer, that other conditions are satisfactory and that the term is at least ten years. He should, however, be informed before negotiations are commenced. He will also consider any suggestion that land belonging to the Government should be leased instead of purchased. The cost of conversion, which must not exceed £250 in respect of any one dwelling, will be borne, in the first instance, by the local authority, the period for the repayment of loans to cover the cost of works being normally ten years. The rents, which should be exclusive of rates and other charges, will be agreed by the department at the outset with the local authority concerned.

After 23rd February a driver of a bus, tractor, or goods vehicle must not be on duty for more than five and a half hours at a stretch, or for more than 11 hours out of the 24. The driver must have 10 hours rest in 24. This is a reversion to the conditions imposed by the Road Traffic Act, 1930. They were suspended during the war in the interests of defence.

THE FUTURE OF TEMPORARY LEGISLATION AND DEFENCE REGULATIONS

(CONTRIBUTED)

THE Emergency Powers (Defence) Acts, 1939 to 1945, will expire on 24th February, 1946. Defence Regulations, general or otherwise, and thousands of statutory rules and orders made under them have depended upon these Acts for their validity. Further, a large number of statutes which have been passed during the war are due to expire at various dates in the near future.

While the necessity for many of the Defence Regulations and war-time statutes either has ceased already or will shortly cease, there are many which will be needed for a considerable time to come and some which it is advisable to make into permanent provisions. While it is arguable that the Emergency Powers (Defence) Acts could be held to extend to the post-war transitional period as well as to the period of actual hostilities, it was decided that it would be better for every reason to make a break with the war-time legislative basis of the emergency powers and to replace it with a fresh foundation expressly designed for the transitional period. In the doing of this, it is most unfortunate that the law has become even more complex than it was before.

The plan is that certain Defence Regulations and emergency statutes shall be carried forward into the transition period by means of two Acts of Parliament. One of these, the Supplies and Services (Transitional Powers) Act, 1945, has already reached the statute book, while the other, the Emergency Laws (Transitional Provisions) Bill, is well on the way. In general, the former covers economic matters and the latter matters other than economic.

It is necessary first to consider the main provisions of the Supplies and Services (Transitional Powers) Act, 1945. Until the expiry of the Emergency Powers (Defence) Acts, this Act will operate side by side with them. The Act applies to the following :—

(1) Any Defence Regulations contained in Pts. III and IV of the Defence (General) Regulations which were in force on 10th December, 1945 ; and

(2) Any of such other Defence Regulations (e.g., Defence (Finance) Regulations) as are specified in Sched. I in force on the same date.

The King may direct by Order in Council that any of these regulations shall continue in effect for the purpose of so maintaining, controlling and regulating supplies and services as (1) to secure a sufficient supply and distribution of these essential to the well-being of the community, or (2) to facilitate the demobilisation of persons and the disposal of surplus material, or (3) to facilitate the switchover of industry, or (4) to assist in relief abroad.

Even if a regulation is no longer necessary for the purpose for which it was made, it may be continued for any one of the purposes listed above. An additional power is given by s. 2 to make regulations for controlling the prices of all kinds of goods and the charges made for all kinds of services. Previously such control was limited to production and distribution. Regulations which are continued by an Order in Council under s. 1 may be revoked or varied.

The procedure for exercising Parliamentary control over regulations and the rules made under them has been changed and the change came into effect with the passing of the Act and does not have to await the expiry of the Emergency Powers (Defence) Acts. Every Order in Council and statutory rule made under the Act to which s. 3 of the Rules Publication Act, 1893 applies is to be laid before Parliament " as soon as may be " after it is made, and is subject to a negative resolution of either House within forty days.

As has already been said, this Act and the Emergency Powers (Defence) Acts continue side by side until 24th February, 1946, when the latter expire. Thereafter no Defence Regulations will be valid unless they have been made the subject of an Order in Council or are made under s. 2, as already explained, or are extended by the Emergency Laws (Transitional Provisions) Act when it is passed. Nevertheless, although after 24th February Defence Regulations can only exist by virtue of one of these provisions, the Emergency Powers (Defence) Acts continue to apply to the regulations in respect of which an Order in Council has been made, except in so far as parts of these are expressly excluded. It is under the authority of the Emergency Powers (Defence) Act, 1939, for instance, that the Treasury has power to impose charges, that regulations may have extra-territorial effect, that proof of instruments is effected, and that prerogative powers are safeguarded.

By s. 8 the Supplies and Services Act will continue until 10th December, 1950, unless it is further extended. By s. 5 (5) the expression " war period " for the purposes of the Requisitioned Land and War Works Act, 1945 (except in s. 45 (2)), shall include any period during which the Supplies and Services Act is in force ; the expression " war purposes " for the purpose of the Requisitioned Land and War Works Act includes the purposes set out in s. 1 (1) of the Supplies and Services Act.

The Emergency Laws (Transitional Provisions) Bill, when it is passed, will have very much the same object, though in a different sphere, as the Supplies and Services Act. The Emergency Laws Bill has three aspects : First, it extends certain Defence Regulations until 31st December, 1947 (as against the extension under the Supplies and Services Act until 1950). These regulations are not left to be specified by Order in Council, but are contained in Sched. I to the Bill. The schedule is itself divided into two parts, Pt. I listing Defence (General) Regulations and Pt. II listing Defence Regulations other than Defence (General) Regulations.

It is important to remember that such regulations as are listed are to be continued in the form in which they stand at the date when the Bill becomes an Act except where they are expressly amended or modified in the Bill. There is a grave danger of misunderstanding as a result of the way in which Sched. I has been drafted. For example, in Pt. II of Sched. I it is provided that the Defence (Administration of Justice) Regulations are to be continued. In point of fact, regs. 1 to 12 and 14 have already been revoked.

Any Defence Regulation which is so continued may be revoked by Order in Council at any time before it expires.

The second object of the Bill is to extend until 31st December, 1947, certain war-time statutes which would otherwise expire on a date related to the date of expiry of the Emergency Powers (Defence) Acts. There are many statutes or parts of statutes so extended. It is not possible to set them all out in detail, and all solicitors should study the Act carefully when it becomes law, as many of the extended provisions, such as s. 2 of the Patents and Designs Act, 1942, and s. 3 (3) of the Guardianship (Refugee Children) Act, 1944, are of great importance in practice. Provision is made for any of the extended provisions to be brought to an end at an earlier date by Order in Council.

The third object of the Bill is to make permanent certain amendments to statutes which have been temporarily amended by Defence Regulations. These permanent amendments are set out in Sched. II to the Bill and here again solicitors should make a careful study. These provisions are too detailed to set out in full here, and reference must be made to the Act when it becomes law. Examples of the subjects covered are traffic signs under s. 36 of the Road Traffic Act, 1934, the marking of margarine wrappers under s. 33 (2) (*c*) of the Food and Drugs Act, 1938 and the preservation of vehicle records under s. 16 (4) of the Road and Rail Traffic Act, 1933.

In addition, these war-time Acts are repealed: the Essential Buildings and Plant (Repair of War Damage) Act, 1939, the Exchequer and Audit Departments (Temporary Provisions) Act, 1939, and ss. 1 to 4 of the Allied Powers (War Service) Act, 1942.

It is evident from the foregoing summary that the law is far from clear and it is probable that many solicitors will find so much of their time taken up by ascertaining the present state of the law that they will have little time left in which to advise their clients. Fortunately, the trouble can be remedied if the right steps are taken. Admittedly, the basic statute law is difficult to follow, but to the practising solicitor and private citizen it is not the basic statutes which matter so much as the Defence Regulations in force by virtue of those statutes, and the Statutory Rules and Orders made under those Defence Regulations.

A comprehensive list of Defence Regulations in force by virtue of the Supplies and Services Act and the Emergency Laws Act should be published by 24th February. The list should be in such form as will enable amendments to be made easily; amendments should be published monthly and a fully revised and up-to-date list published half-yearly.

It is probably too much to ask that Statutory Rules and Orders should be treated in the same way, and in any case there are the various systems of publishing emergency legislation provided by private firms of publishers. It is suggested that the provision by the Stationery Office of some such system as is outlined above would meet a long-felt want especially in view of the various dates at which various Acts are due to expire.

It is inevitable that, in a transitional period such as this, there should be complications. At the same time it is reasonable to ask that these complications should be authoritatively simplified and the process made as cheap as possible. The overheads of most firms are inevitably increased when things are so obscure and this leads to the financial returns being correspondingly diminished. The result is that the services which the profession renders to the public and the wages and salaries which firms can pay to their staffs are unnecessarily reduced.

COUNTY COURT LETTER

Greater Hardship

In *Sutton* v. *Turner*, at Melton Mowbray County Court, the claim was for possession of No. 3, Melbray Drive, Melton. The case for the plaintiff was that her late husband had joined the Army in 1940, whereupon she and her young child went to live with her husband's parents. The house was then let to the defendant and his wife. In January, 1944, the plaintiff's husband was about to be invalided out of the Army, and application was made to the defendant to vacate the house, without success. The plaintiff's husband died in October, 1944, and she was now living with friends. The plaintiff was unwilling to share the house. The defendant's case was that he was not in a position to buy a house and could not find alternative accommodation. He had no children. His Honour Judge Field, K.C., held that greater hardship would be caused by granting an order than by refusing it. No order was therefore made.

COMPANY LAW AND PRACTICE

ENEMY MEMBERS

It is not at first sight easy to see what exactly is the position of an enemy member of an English company during a war. There is no difficulty in the case of an enemy alien allowed to reside in this country. It seems clear that his rights in a company of which he was a member would continue to be the same as they had been before the war. In *Schaffenius* v. *Goldberg* [1916] 1 K.B. 284, for example, it was decided by the Court of Appeal that an alien enemy resident in England, even if he was interned and so became a prisoner of war, was not prevented from suing on a contract made by him in this country. The general principles, therefore, it will be necessary to investigate are those defining the position of those enemies who are in enemy territory.

Although it does not appear to be analogous, it may be of interest to examine the case of a partnership, one of whose members becomes an enemy. The question was discussed in *Hugh Stevenson & Sons, Ltd.* v. *Aktiengesellschaft fur Cartonnagen-Industrie* [1918] A.C. 239, and it was there held by the House of Lords that where two persons carried on business in partnership and one of them became by virtue of an outbreak of war an alien enemy and the other continued to carry on business, using the partnership plant, notwithstanding that the outbreak of war had dissolved the partnership, the enemy partner became entitled to a share of the profits made after the dissolution. In his speech Lord Finlay, L.-C., said: "It is not the law in this country that the property of enemy subjects is confiscated. Until the restoration of peace the enemy can, of course, make no claim to have it delivered up to him, but when peace is restored he is considered as entitled to his property with any fruits it may have borne in the meantime." He went on to point out that the question was not one of any contract, but of the rights of property which both partners had in the assets of the firm. This case is of some interest on the question under discussion, because a share in a company represents from one point of view contractual obligations between a company and its members, and from another point of view it represents certain rights in the property of the company. It is, however, not analogous as the company will continue to exist regardless of the outbreak of war while a partnership is dissolved.

Turning now to decisions relating to companies. *Robson* v. *Premier Oil & Pipeline Co., Ltd.* [1915] 2 Ch. 124 is authority for the not surprising proposition that during a war an alien enemy is not entitled to exercise a right of voting in respect of shares in an English company. That decision proceeds on the ground that any such exercise of the right would be in contravention of the prohibition of intercourse with an alien enemy stated in *The Hoop*, 1 C. Rob. 196. The interest from the present point of view lies in the suggestion that the alien enemy's rights were merely suspended, and if nothing further was done would revive at the end of the war. The point was not referred to in the judgment of the Court of Appeal and was not relevant to the question then in issue, but Sargant, J., in his judgment, in which he came to the same conclusion, said that he thought that the right of voting was suspended by reason of the war. This is in accordance with the principles referred to above, which apply in the case of a partnership, and the probable result would seem to be that at the end of a war the alien enemy became once again a full member of the company and possibly entitled, subject to legislation preventing it, to the dividends declared during the time he was an alien enemy.

Further support for the suspension view is to be found in *Daimler Co., Ltd.* v. *Continental Tyre & Rubber Co.* [1916] 2 A.C. 307. That was a case in which practically all the shareholders were alien enemies, and the question there decided did not directly involve an answer being given to the question of what became of the rights and property of enemy alien shareholders. Lord Parmoor, however, indicated his view of the question in his speech in the following words: "The effect of the outbreak of war is to suspend as from that date and during the war all rights of the enemy directors and corporators who take any part in the management and direction or control of a British company carrying on business in this country." He pointed out that anyone in this country who tried to get in touch with them would commit an offence and that the Board of Trade had taken control of the books of the company, and went on: "Mr. Gore Brown argued for the appellants that the enemy corporators had disappeared during the period of the war. It is more accurate to say that

their rights have been suspended by the outbreak of the war and will remain in suspense during the period of the war." This proposition he founded on the case of *Ex parte Boussmaker*, 13 Ves. 81, where an alien enemy was admitted to proof in a bankruptcy, the dividend being reserved during the continuance of the war.

Similarly, Lord Shaw of Dunfermline said: "As to shareholders or directors who are not alien enemies, they stand *pendente bello* legally bereft of all their coadjutors who are." He pointed out that no payment of assets, dividends or profits could be made to alien enemy shareholders, but that the property and the business of the company might be preserved. He appears there merely to be dealing with the interests of any British shareholders who wish the company to carry on business here notwithstanding the war, but there seems implied in his language the view that at the end of the war the former alien enemy members would return to be full members of the company.

The word "suspension" is again used in *Re Anglo-International Bank, Ltd.* [1943] Ch. 233. That case depended on the question whether a special resolution for the reduction of capital had been properly passed and that depended on whether or not notice of the meeting had been properly given. The articles provided for notice to be given by post, but ninety-nine of the shareholders had registered addresses in enemy countries or enemy-occupied countries, and no notice was sent or attempted to be sent to these members. Bennett, J., held that the provisions of s. 117 of the Companies Act had not been complied with and refused to confirm the reduction. The Court of Appeal reversed the decision. Lord Greene, M.R., in delivering the judgment of the court, said: "The suspension of the rights of an alien enemy shareholder cannot in our opinion be limited to his right of voting. It must extend to the ancillary right conferred by the contract under which he holds his shares to receive notices of the meetings of the company. That right is a right in relation to property in this country, namely, the shares, and is in our opinion suspended just as much as the right to vote."

Different considerations arise where the shares are vested in the Custodian of Enemy Property. Under the Trading with the Enemy Act, 1914, a custodian in whom shares have been vested is entitled to do all the acts which he can do in his character of shareholder in the company (*Re R. Pharaon et Fils* [1915] 1 Ch. 1), so that the rights of voting, receiving profits and so on are not in this case suspended, but transferred to the custodian. What in this case is said to be suspended is the beneficial ownership of the shares. In *Re Munster* [1920] 1 Ch. 277, Russell, J., said: "The second objection urged against this view of the [Trading with the Enemy] Act of 1914 is that it involves the existence of a period of time during which there is no beneficial owner of the property and that this state of affairs is contrary to ordinary legal conceptions and principles. That is quite true, but it is the result of a statute which in my judgment causes the beneficial ownership to be and remain in statutory suspense or abeyance during the period in question, during which period the custodian has certain limited powers of dealing with the property."

From the point of view of the enemy alien this discussion is merely academic for his rights on ceasing to be an enemy alien will no doubt be defined by the treaties of peace and the consequent legislation in this country and, so far as he is concerned, until that date he can have no real interests whatever in any property in this country. It may, however, be of some importance for the English companies to know to what extent they can go in disregarding alien enemy members. It is clear from the cases I have referred to that companies need not give notices to alien enemies and can ignore their voting rights unless their shares have been vested in the Custodian of Enemy Property. Nor can they pay dividends or capital to such people. Nevertheless, it is impossible to say that members of a company cease altogether to be members of the company on their becoming alien enemies. For example, it will still be necessary to take into account the shares held by alien enemies when working out the one-tenth of the shares issued for the purposes of s. 135. A more difficult question is whether the existence of one alien enemy member would prevent the other members by their unanimous agreement waiving provisions as to notice of meetings. The cases that provide authority for the proposition that the unanimous agreement of the corporators will bind the company do not, of course, consider the position where one member is not entitled to vote, or even have notice, but it might well be that those cases do, in the light of the cases referred to above, justify the proposition that the unanimous agreement of all the corporators who are entitled to be told of the meeting would equally bind the company.

A CONVEYANCER'S DIARY

TAX FREE ANNUITIES

Inland Revenue Commissioners v. *Cook* [1946] A.C. 1 raises the question how the annuitant's allowances and reliefs are to be dealt with in the case of a tax-free annuity given by will. Although, broadly speaking, the effect of the decision is to confirm *Re Pettit* [1922] 2 Ch. 765, the House of Lords reached its decision by a majority of three against two. Moreover, there is some reason for thinking that the existing practice as to the method of doing the calculations has been held to be wrong.

Inland Revenue Commissioners v. *Cook* was a Scottish case. The law of Scotland on this matter is the same as that of England: it appears from the report that the earlier Scottish cases had corresponded with *Re Pettit* and its successors. *Inland Revenue Commissioners* v. *Cook* was evidently considered to be a test case, since there was an arrangement between the Crown and the respondent as to her costs.

The testatrix, who died in 1937, left a will under which the respondent was given "an annuity or yearly sum at the rate of £100 per annum for the remainder of her life . . . payable at two terms in the year Whitsunday and Martinmas." The testatrix also provided that such annuity "shall be payable free of all deductions including income tax and government duty." The trustees duly paid to the respondent during the income tax year ending 5th April, 1940, two sums each of £50. During that year the standard rate of income tax was 7s. in the £. The annuity was wholly paid out of income that had already been brought into charge to tax. Included in the sum so brought into charge was a gross sum of £153 16s. 11d., of which £100 was paid, as stated above, to the respondent, and the £53 16s. 11d., being income tax at 7s. in the £ on £153 16s. 11d., was accounted for to the Inland Revenue. Following the usual practice in cases believed to be governed by *Re Pettit*, the respondent, who had no other income, claimed the following repayments. First, £35 in respect of personal allowance at the full standard rate of 7s. on £100 (which was the then figure for personal allowance). Second, two-thirds of the tax at the standard rate on £53 16s. 11d., which worked out at £12 11s. 4d. These sums added up to £47 11s. 4d., for which the annuitant was proposing to account to the trustees under the usual practice. The Revenue authorities challenged her claim and the litigation ensued.

In the House of Lords, Viscount Maugham stated that "it is not surprising that the Inland Revenue authorities have found it difficult to state the precise grounds on which they rely in contesting the respondent's claim" (at p. 7). He stated that the first thing to determine was the true construction of the clause in the will, and observed that a long line of decisions was to the effect that a gift in these terms meant that the testator intended to give, in addition to the fixed annuity, such a sum as would enable the trustees in each year to discharge the income tax on the total amount of the fixed

annuity and the additional sum and to pay the balance (which in the normal course would be the exact amount of the stated annuity) to the annuitant. Next, it is impossible to tell until the end of the year exactly what rate of tax any taxpayer has to bear: "for instance, he may earn or lose other income. He may marry. A child may be born to him, or may die. All these events may happen during the year. Nor have trustees either a duty or a right to make inquiries on these matters." Accordingly, the Legislature had provided that a person liable to make the payment should be entitled to deduct or retain thereout a sum representing the amount of tax on the aggregate annuity at the standard rate for the year. In the present case, where the aggregate annuity was £153 16s. 11d., the amount to be deducted was £53 16s. 11d. On the footing that the gross income of the respondent was £153 16s. 11d., she was entitled to the reliefs, amounting to £47 11s. 4d., which she claimed. The appeal therefore failed. Viscount Maugham pointed out that the respondent had a "plausible argument . . . as the result of which her claim might have been for the total sum of £53 16s. 11d." (at p. 13). But he dealt only with the smaller sum which was actually claimed. This "plausible argument" is mentioned again below. The effect of his lordship's speech was to confirm the existing practice based on *Re Pettit*. He distinguished *Re Jones* [1933] Ch. 842, where the wording had been different, since it was "such an annuity as after deducting therefrom income tax at the current rate" would leave a stated amount. The expression "current rate" had been interpreted as meaning "standard rate"; in the present case the annuity was free only of tax at the effective rate to which the annuitant was liable, and not at the standard rate.

Lord Thankerton stated that the claim of the Crown was that it was the duty of the trustees to pay the respondent £65 in cash and to give her a certificate of deduction of tax showing that £35 had been paid as income tax, and that the respondent was bound to accept payment in this form. Such a procedure is, of course, inconsistent with *Re Pettit*, to which Lord Thankerton referred with evident approval. He then observed that under r. 19 of the General Rules applicable to Schedules A, B, C, D and E, as amended by Finance Act, 1927, s. 39 (1), the trustees had no option but to apply the standard rate to the annuity of £100 and to deduct that. This process involved a calculation by which the figure of £153 16s. 11d. was arrived at. At the end of the year, since the respondent had no other income, it turned out that the £53 16s. 11d. deducted was deducted in error, since the respondent was not liable to income tax at all. Accordingly, the Crown was bound to repay the whole of this £53 16s. 11d., and his lordship could see no reason for reducing it to £47 11s. 4d. The basis of this opinion appears to be that the income of the respondent for purposes of income tax was £100 and not £153 16s. 11d.

Lord Porter agreed with Viscount Maugham and Lord Thankerton. He took the view, however, that the distinction between gross and net income has no application in a case where income is given free of tax. The respondent's income was therefore £100 only, but in providing her with that sum the trustees were entitled to take into account tax deducted at source upon income coming into their hands. In so doing, it appeared that the £100 which they had given to the respondent was all that was left, after deduction of tax, out of a sum of £153 16s. 11d., and that in order that she might receive £100 at the proper time, tax to the amount of £53 16s. 11d. had to be set aside. The latter sum was paid on her behalf and was therefore recoverable by her since she was not liable to tax at all, her income being £100 only. The sum recovered was not hers to keep and she was accountable for it to the trustees. The lesser amount of £47 11s. 4d. having been claimed, the respondent was, of course, entitled to recover it, since the greater includes the less.

Lord Russell of Killowen dissented. In his view the only material facts were as follows: (1) The trustees out of the income of the estate, which had already borne tax by deduction, paid to the respondent two sums of £50 each; (2) they made no deduction in respect of tax under r. 19 of the General Rules because the will prohibited any such deduction; (3) the two sums of £50 constituted the sole income of the respondent; (4) she was therefore not liable to pay income tax at all. She had received exactly what the will gave her, namely £100, and had paid no tax. She therefore had no claim to recover anything. The solution based on *Re Pettit* involved a "two-fold fiction," namely, that the respondent's income during the year was £153 16s. 11d., and that the trustees had disbursed a sum of £153 16s. 11d., out of which they had paid to the Revenue income tax at the standard rate.

Lord Simonds also dissented. He said that the gift was in terms of "deceptive simplicity," but that it meant that the annuitant was to receive "£100, no more and no less," whatever her other income or lack of it. He saw no basis for saying that her income was really £153 16s. 11d. The machinery for the collection of tax introduces complications, having regard to the fact that the testatrix had made a bequest which was in form irreconcilable with that machinery. He saw no reason why the fiction should be adopted that her income was really £153 16s. 11d., or that that was the amount given her by the will. The result contemplated by the will could be satisfactorily achieved, so far as the substance of the gift was concerned, by paying to the annuitant £65 in cash and giving her a certificate of deduction of tax which would enable her to recover a further £35 from the Revenue. He also pointed out two other difficulties which arise from the conventional way of dealing with this matter. First, what is the character of the £47 11s. 4d. repaid tax when it reaches the hands of the trustees? Presumably it is part of the trust income, but is it income upon which tax has been paid or is it income still liable to tax under some case of some schedule? Second, the figure of £47 11s. 4d. was arrived at on the basis that the annuitant's income was £153 16s. 11d. But that was not the fact on any view. On the contrary "the argument is that, as the Crown has received £53 16s. 11d. by way of tax in respect of every £100 of income left in the hands of the trustees, therefore it has received £53 16s. 11d. in respect of the £100 paid by the trustees to the annuitant. If so, since *ex hypothesi* the annuitant pays no tax, the whole of the £53 16s. 11d. should be repaid." In this last point lies the main practical difficulty caused by *Inland Revenue Commissioners* v. *Cook*. It is true that the point was only introduced by Lord Simonds as showing one of the reasons why he doubted the soundness of the foundation of the respondent's claim. That foundation was, however, *Re Pettit*, which, in effect, the majority of the members of the House of Lords approved. Further, though upon the facts it was not necessary to decide that the respondent was entitled to more than £47 11s. 4d., it was reasonably clear that the majority would have been prepared to hold that she was entitled to £53 16s. 11d. And it seems to follow that both members of the minority would have held that, if *Re Pettit* was to be followed, the amount repayable was £53 16s. 11d. Accordingly, the assumption that one must ascertain the amounts of the reliefs upon the basis of the "grossed up" income is wrong. The right to relief has apparently to be calculated on the basis of the amount actually directed by the will to be paid to the annuitant. In a year when income tax is at 10s. in the £, the usual method would have been to treat a tax-free annuity of £100 as being really an annuity of £200 subject to tax; the annuitant would then claim the following reliefs. First, personal allowance on the sum of £80, i.e., £40; second, the difference between the standard rate of 10s. and the applicable reduced rate of 6s. 6d. in respect of each £ of the remaining £120, i.e., £21. The sum to be recovered would, therefore, be £61. But under the calculations suggested by *Inland Revenue Commissioners* v. *Cook* the position would be as follows: The annuitant's total income would be £100 only. She would be liable to pay no tax upon the first £80 of this sum, as being covered by her personal allowance. On the other £20 she would be liable to tax at 6s. 6d. in the £, i.e., £6 10s. That would be her total liability to income tax. But, since the gross annuity would have paid £100 of income tax by deduction, there would be a sum of £93 10s. to come back. If this conclusion is right,

THE
LAW REVERSIONARY INTEREST SOCIETY
LIMITED

Established 1853

163-4 Strand, London, W.C.2

PURCHASES.—The Society purchases approved Interests which depend upon the duration of human life, comprising Reversions, either absolute or contingent, and Life Interests, either in possession or reversion.

LOANS.—The Society also grants Loans on security of such Interests, either on ordinary Mortgage or by way of Reversionary Charge. This latter method meets the convenience of Borrowers who do not wish to make any payment for either principal or interest until their Reversionary Property falls into possession.

Full information may be obtained from the above address or any Branch of

EQUITY & LAW LIFE ASSURANCE SOCIETY

SECOND EDITION, 1946

THE EFFECT OF WAR ON CONTRACTS

By **GEORGE J. WEBBER, LL.D.**

With a FOREWORD by

The Rt. Hon. SIR DAVID MAXWELL FYFE, K.C., M.P.

The new edition, just published, has been almost entirely rewritten. It presents a complete study of the effect on contracts of war and emergency legislation. Clearly cross-referenced, adequately indexed, it is the most comprehensive consideration of the subject yet published.

NOW READY *872 pages* *£3 17s. 6d. net*

THE SOLICITORS' LAW STATIONERY SOCIETY LIMITED

88-90 CHANCERY LANE, LONDON, W.C.2, and all Branches

current affairs

"In the reconstruction at home, and in the drive for increased exports, this Bank is ready to take its full share."

(Extract from the Statement to Shareholders of **National Provincial Bank Limited** *by Mr. Colin F. Campbell, the Chairman, at the 113th Annual General Meeting.)*

NPB for service

and there seems ample reason in the speeches in the House of Lords to justify it, it will be the duty of the advisers of the annuitants in these cases to revise their practice. Further, there would be ground for reopening past transactions and claiming more. Although the annuitants do not personally benefit by these repayments, since they have to account for them to the trustees, they are compellable to make their maximum claim if the trustees so demand (*Re Kingcome* [1936] Ch. 566).

ESTATE DUTY ON VALUE PAYMENTS

A correspondent inquires whether any of the conclusions expressed in my recent article are affected by s. 11 of the War Damage Act, 1943. Under that section it will be possible for the Treasury, with the approval of the House of Commons, to increase value payments in certain circumstances. The powers under this section arise only "when the discharge of value payments generally or in substantial volume has become permissible." I do not see how the possibility that the scale of payments will hereafter be raised under the section could now be taken into account. If the right to receive a value payment is an "interest in expectancy," and if the executors elect to postpone payment, and if before payment the powers under s. 11 are exercised, the amount which they will receive will be unexpectedly large and they will have to pay more accordingly. I do not see how s. 11 could affect the position in any other circumstances.

LANDLORD AND TENANT NOTEBOOK

EFFECT OF CHANGES IN THE LAW

THOUGH the 1914–1918 war produced a number of decisions by the Court of Appeal in which it was held that the doctrine of frustration could not apply to leases, and the 1939–1945 war produced one in which some of the law lords said that that doctrine might conceivably apply to such in exceptional circumstances (see 89 SOL. J. 158), surprisingly little has been heard of cases in which covenantors have found that emergency legislation in the shape of Defence Regulations, or in some other shape, has made it unlawful for them to perform their obligations. To some extent, of course, legislation itself has made provision for such eventualities, the Landlord and Tenant (War Damage) Acts being obvious examples. But one would have expected that building restrictions and compulsory acquisition of rights to use land and the like would have led to more trouble between landlord and tenant than has actually been the case, and that the question of discharge of obligations by *force majeure* would have been mooted. The possible application of *that* doctrine was alluded to, for instance, in the case of *Budd-Scott* v. *Daniell* [1902] 2 K.B. 351. The main issue in that case was whether a covenant for quiet enjoyment was to be implied in a tenancy agreement which was silent on the subject, the question being argued at length (in view of a dictum to the contrary) and answered in the affirmative; but the actual complaint against the landlord was that she had had the house painted during the term, causing the tenant to move out while this was done, and as an alternative defence she relied on the circumstance that this painting had been so done pursuant to a private Act of Parliament, and, if she had not done it, Commissioners appointed under that statute would have been entitled to do it. No authority was cited in support of this defence, and the fact being that the Act was in force when the house was let, the landlord having forgotten about it, Alverstone, C.J., disposed of the point in these terms: "This is not a case of *force majeure*. The plaintiff might have protected herself by the terms of the tenancy."

But is the implication that if the statute had been enacted during the term the covenantor would have been excused a sound one? If no decision was cited on behalf of the landlord, one authority was invoked by those concerned for the tenant, namely, *Baily* v. *De Crespigny* (1869), L.R. 4 Q.B. 180. The change in the law in that case had been brought about by the London, Brighton & South Coast Railway (New Lines) Act, 1862, passed twenty-two years after the grant of a lease by the defendant to the plaintiff, in which the defendant had covenanted that neither he nor his assigns would permit to be built any messuage on certain land contiguous to the premises demised. Under the statute, the railway company demanded an assignment of that land; as they could acquire it by executing a deed poll if refused, and the defendant complied. A railway station was then built. It was held by Hannen, J., that the title had in effect been transferred by the Legislature; that though a party can bind himself to do what is impossible or pay damages in default, and this applies when an eventuality occurs against which he could have guarded himself, the law was, that if what happened could not reasonably have been supposed to have been in the contemplation of the contracting parties when the contract was made, they will not be bound by general words which, though large enough to include it, were not used with reference to the particular contingency. In this case Parliament had created a *new kind of assign* and one which would not be bound by any stipulations the assignor might seek to impose.

Two other authorities are worth mentioning, decided soon after that last-mentioned. In *Wadham* v. *Postmaster-General* (1871), L.R. 6 Q.B. 644, the plaintiff's predecessor in title had, in 1852, granted a lease to the defendant's predecessor in office under which the tenant covenanted to use the premises demised as a post-office and not for any other purpose. In 1870, armorial bearings licences and dog licences having been made obtainable at post offices, their issue being provided for under statutes 30 Vict. c. 5 and 32 & 33 Vict. c. 14, passed since the grant of the lease, this particular office proceeded to issue them. The plaintiff's action failed. Cockburn, J., stressed the fact that while inland revenue business, as opposed to post-office business, was being done, there was an *analogy* between the two, so that the sale of licences at post offices, convenient to the public, was "not foreign to" the functions of the P.M.G. Blackburn, J., went rather more closely into the matter; having noticed that the lease was for 1,000 years at one shilling a year, he found that the object of the grantor, who was developing the neighbourhood (to use a modern expression), was to induce other people to take building leases. The same learned judge also pointed out that the parties must have supposed that the functions of the P.M.G. might change.

The other case, *Jones* v. *Bone* (1870), L.R. 9 Eq. 674, was an indirect consequence of the passing of a statute known as the Wine Licences and Refreshment Houses Act, 1860, some six years after a building scheme had provided that none of certain properties, of one of which the defendant had become tenant, should be used as a hotel, tavern, public-house or beer-house, nor should the trade or calling of a hotel or tavern-keeper, publican, beershop keeper, or seller by retail of wine, beer, spirit or spirituous liquors, be carried on upon them. Before then, it would have been unlawful to sell less than two gallons or twelve bottles of wine or spirits at a time; and the defendant, a grocer, took advantage of the change to take out a licence known as a grocer's licence. Refusing an injunction, James, V.-C., said that at the time when the covenant was entered into, the business of a seller by retail of wine, etc., was, in the then state of the law, an expression which would naturally apply to the case, of, *inter alia*, a gin-palace bar; it was against this trade that the covenant was directed, and not against that of a wine merchant. This was *not the sort of thing* intended to be prevented.

When frustration is discussed nowadays, one is bound to hear two views put forward; there are some who argue that the basis of the doctrine is that the law will not enforce what is either impossible in fact or illegal according to itself, the other that there must be implied in a contract a reservation

that if conditions or law so alter that the parties would not have made the bargain had the new conditions or law been expected when it was made, then the person affected may lawfully repudiate the contract. To what extent these views are reconcilable is an academic question; but it is interesting to note that in the cases I have discussed on enforceability of covenants, the courts have been at pains to give effect to the covenants, but have avoided penalising the covenantors by interpreting the provisions agreed to in their favour, i.e., by holding that "assign" meant assignee chosen voluntarily, or that "business of a seller by retail of wine, beer, spirit or spirituous liquor," meant that of a gin palace, and by considering the object with which the covenant was entered into which, in the case of *Wadham* v. *Postmaster-General*, led to an examination of the covenantee's motives and business acumen.

TO-DAY AND YESTERDAY

February 11.—On 11th February, 1577, it was noted in the Gray's Inn Pension Books that "whereas Mr. Daffhorne is indebted unto the House in the sum of 45s. 4d. the same upon consideration by reason of sickness is remitted." The Steward complained of two other members for non-payment of commons and they were given a week to pay on pain of expulsion.

February 12.—"Banc. R. The bearer, Theodore, Baron de Neuhoff and de Stein, hath this day a rule of Court to go out of the prison of the King's Bench granted to him, to transact his affairs. (Signed) L. Cottam. Dated this 12th day of February, 1753." This document is more than a legal curosity. Theodore was the unfortunate ex-King of Corsica who, having drifted to England, fell into debt and was imprisoned. When he was dying a tailor living at No. 5, Little Chapel Street, Soho, took him in and there he expired in December, 1756. He was buried in St. Anne's churchyard.

February 13.—Francis Crawley studied law at Gray's Inn, to which he was admitted in 1598. He became a serjeant in 1623 and was appointed a judge of the Common Pleas and knighted in 1632. In the ship money case he gave a decided opinion in favour of the Crown and when the Civil War broke out he joined the King at Oxford, where he was made a doctor of civil law. In 1645 the Commons passed an ordinance disabling him from being a judge as though he were deceased. He died on 13th February, 1649, and was buried at Luton near his ancestral home.

February 14.—On 14th February, 1666, Pepys noted: "I took Mr. Hill to my Lord Chancellor's new house that is building and went with trouble up to the top of it, and there is the noblest prospect that ever I saw in my life, Greenwich being nothing to it; and in everything it is a beautiful house, and most strongly built in every respect; and as if, as it hath, it had the Chancellor for its master." The place where Lord Clarendon's house stood is in Piccadilly opposite the top of St. James's Street.

February 15.—Benjamin Walsh, a speculating stockbroker, who became a member of Parliament, was employed by Sir Thomas Plumer, then Solicitor-General, who entrusted him with a cheque for £22,200 to purchase Exchequer bills. He cashed it and was about to abscond for America when he was arrested. He was tried at the Old Bailey before Lord Chief Baron Macdonald on an indictment charging him with felony. He was convicted, but the case was reserved for the judges to consider a point of law and decided by them in his favour. Accordingly, on 15th February, 1812, the Chief Baron wrote to Mr. Secretary Ryder to acquaint him of this and to recommend Walsh as a fit subject for the royal pardon. Walsh was expelled from the Commons and went bankrupt.

February 16.—Living was good in 18th-century Gray's Inn. On 16th February, 1757, it was ordered "that there be two barrels of Colchester oysters on Fridays in Michaelmas term for the barristers and students at the expense of the House, and that the same quantity be had on Fridays in Hilary term for which the Steward is to be allowed 2s. each day by the House." A bequest of £50 having been left to the Society, two benchers were appointed "to consider what books shall be purchased with Mr. Hawley's legacy."

February 17.—On 17th February, 1774, the Gray's Inn benchers ordered "that William Mayhew, Esqre, be Treasurer of this Society for the year ensuing. Mr. Cornwall having desired leave to decline the office on account of his not having time to attend the duty." Charles Wolfran Cornwall was politician rather than barrister. In 1774 he was member of Parliament for Winchelsea. He was Speaker from 1780 till his death in 1789.

Treasonable Aliens

Just after reading the opinions of the Lords in Joyce's case, I found in the Life of Lord Campbell an account of an earlier problem of an alien's allegiance. While he was Attorney-General he had to handle the question of American "sympathisers," who had crossed the border to take part in an insurrection in Canada. The question of principle arose: "Whether if the subjects or citizens of a foreign state with which we are at peace, without commission or authority from their own or any other government, invade the English territory in a hostile manner and levy war against the Queen in her realm, we are entitled to treat them as traitors?" Campbell wrote: "The Canadian court held that we could not, as they had never acknowledged even a temporary allegiance to our Sovereign; and of this opinion was Sir William Follett. But after reading all that is to be found on the subject, I came to the conclusion that they owed allegiance when as private individuals they voluntarily crossed the English frontier; that it was no defence for them to say that they then had arms in their hands and intended to murder the Queen's subjects; and that they were in the same situation as a Frenchman would be who should land at Brighton with a pistol in his hand and, seeing the Queen on the beach, should instantly march up and fire at her. This man, all the world would say, might be tried on the statute of King Edward III for imagining the death of the Sovereign. The Canadian judges very absurdly and inconsistently held that these 'sympathisers' might be tried for murder. The paper which I wrote on this occasion . . . must be in the archives of the Foreign Office. I never kept a copy of any opinion I wrote, private or official." Another question arising out of the insurrection was not far off Lord Macmillan's conundrum during the hearing of Joyce's appeal: "If a gun is fired in Calais and murders people in Dover, where is the offence committed?" We had seized a ship on the American side of the Niagara, while it was engaged in carrying stores to rebels in British territory. Campbell held that we were in the right, "just as we might have taken a battery erected by the rebels on the American shore, the guns of which were firing against the Queen's troops in Navy Island."

Missiles in Court

A short time ago there seemed to be a spasmodic outbreak of violence in magistrates' courts. Crying: "I'll show you what I think of you," a nineteen-year-old girl hurled one of her shoes at the Bristol magistrates; and, when she was remanded to Cardiff Prison, she struggled, shouting: "I want my shoe back." At Toynbee Hall, during a sitting of the juvenile court, a boy of fifteen tried to throw a chair at the magistrates while a long list of his crimes was being read out. In a Cumberland court a man threw a pair of boots at a Royal Marine charged with murdering his daughter; the prisoner ducked and the boots hit the wall above his head. Such occasions are curiously rare. In his book of reminiscences the clerk of the late Avory, J., told of a scene he once witnessed in the tiny fourth court in the former Old Bailey, where the dock and the bench were so close together that judge and prisoner were almost within touching distance. On this occasion a judge was passing sentence on an old workhouse woman when she stooped down, took off her boot and flung it at him with frenzied force. It just missed his head and she was put under control before she could make use of her remaining ammunition. After that prisoners were more closely watched and boot-throwing became impracticable.

The telephone number of Messrs. Stevens & Sons, Ltd., Publishers, 119 & 120, Chancery Lane, London, W.C.2, has been changed from Holborn 1386 to Holborn 1545–6.

At the monthly meeting of the Directors of the Solicitors' Benevolent Association, held on the 6th February, 1946, grants amounting to £1,408 7s. were made to twenty-five beneficiaries.

NOTES OF CASES

CHANCERY DIVISION

Trussed Steel Co., Ltd. *v.* Green

Cohen, J. 7th December, 1945

Emergency legislation—Company—Scheduled undertaking—Managing director dismissed from office—Whether dismissal authorised—Essential Work (General Provisions) (No. 2) Order, 1942 (S.R. & O., 1942, No. 1945), arts, 2, 4.

Motion.

The Essential Work (General Provisions) (No. 2) Order, 1942, made pursuant to the powers conferred by art. 4A of the Defence (General) Regulations, 1939, reg. 58A, by art. 2 (1), authorises the Minister to schedule an undertaking as respects any persons employed in the undertaking or any class of persons so employed. Article 4 prohibits a person carrying on a scheduled undertaking from terminating the employment of any specified person, except with the permission of a National Service officer. On the 14th March, 1944, the Minister of Labour and National Service made an order and certified the undertaking of the plaintiff company as a scheduled undertaking in respect of the persons specified in the order, who were all persons employed "at or from" a number of specified addresses where the undertaking was carried on, including its registered office. The defendant was the managing director of the plaintiff company. His original seven years' service agreement had been extended for the duration of the war "unless and until determined by either party by six months' notice in writing." A notice determining the defendant's appointment was served on him on the 14th November, 1945, and he was given six months' salary in lieu of notice. The defendant disputed the right of the company to dismiss him and intimated that he would continue to act as managing director. The plaintiff company in this action sought a declaration that the defendant's employment had been validly determined and an injunction to prevent him acting as managing director. By this motion they sought an interim injunction.

COHEN, J., said that he had been referred to a number of cases in which in certain contexts managing directors had been held to be servants in the employment of a company. The question he had to consider was whether the defendant was in the employment of the plaintiff company, having regard to the terms of the Essential Work (General Provisions) (No. 2) Order, 1942. The word "worker" in the Defence (General) Regulations, 1939, reg. 58A, art. 4A, was used in the widest sense, and he thought he was not justified in construing the word "worker" in art. 4A so as not to include a managing director. While the Minister had power to include a managing director, the question was had he done so? The order of 1944 applied to all persons employed by the undertaking "at or from" certain addresses. In *Sputz* v. *Broadway Engineering Co., Ltd.*, 171 L.T. 50, Uthwatt, J., held that a sole managing director was not a person employed "at" any particular address. He thought that a managing director was not, in the absence of some expressed agreement, a person whose employment was "at or from" any particular place. Injunction granted.

COUNSEL: *Raymond Jennings* and *Milner Holland; Aiken Watson* (as *amicus curiae* for the Minister of Labour).

SOLICITORS: *Denton, Hall & Burgin; Braby & Waller; Solicitors of the Minister of Labour.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Bint *v.* Lewisham Borough Council

Lewis, J. 7th December, 1945

Negligence—Public recreation ground—Unrepaired gap in fence—Child injured by trespassing on adjacent railway line—Whether local authority liable.

Action tried by Lewis, J.

The defendant borough council were the owners of a public recreation ground known as Chinbrook Meadows, containing such attractions as a paddling pool, etc., for children. Before 1941 there had been an intact fence along the edge of the recreation ground between it and a railway embankment. The fence was six feet high, and consisted of concrete posts and chain netting. Just beyond it, running parallel, was a fence erected by the railway company consisting of posts and rails. Lewis, J., found as a fact that the borough council's fence, while not insurmountable, was, where intact, a sufficient obstacle. In 1941 the enemy hit the embankment with a bomb which blew a hole in the railway company's fence and demolished a portion of the borough council's fence at the same point, burying it beneath débris. The railway company closed the gap within forty-eight hours by means of barbed-wire fencing, which also, Lewis, J., found, constituted a sufficient obstacle to anyone wishing to reach the embankment. The borough council did not repair their fence. There was no evidence how the plaintiff had reached the railway lines from the recreation ground, but Lewis, J., assumed for the purposes of his decision that he passed through the gap left by the borough council in their fence. The plaintiff, suing by his mother as next friend, claimed damages from the borough council for negligence.

LEWIS, J., said that he knew of no previous case on all fours with the present, as the others concerned children who received injury from a dangerous thing on land on to which the occupier had licensed the children to go, or had not prevented them from going. Here the danger was not on the land of the borough council, and the question was whether that difference constituted a distinction in law. True, the council had done nothing after the bomb had demolished part of their fence; but the railway company had closed the gap by fencing which constituted, in the words of Lord Shaw in *Robert Addie & Sons (Collieries), Ltd.* v. *Dumbreck* [1929] A.C. 358, at p. 378, "an obstacle to an invader, adult or infantile, which the invader must consciously overcome." It was argued for the plaintiff, on the assumption that he passed through the gap in the borough council's fence in order to reach the railway, that it was the duty of the council, who had licensed or invited him into their recreation ground, not only to protect the children while on that ground, but further to see that they were so satisfactorily caged in upon it that they could not wander off into danger on adjacent land. There was no authority for that proposition. In the other cases the children had always come into contact with a dangerous thing on the defendant's land. The council could not be held to blame. There was no evidence that children in the recreation ground had formed the habit of straying on to the embankment, and the gap in the council's fence was in any event covered by the railway company's substantial fencing. There must be judgment for the borough council.

COUNSEL: *Elliot Gorst; Berryman*, K.C., and *Whitmee.*

SOLICITORS: *Lewis-Barnes, Wheeler & Co.; Berrymans.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Buttery *v.* Pickard

Humphreys, J. 17th December, 1945

Landlord and tenant—Agreement for reduced rent owing to tenant's war difficulties—Subsequent claim for arrears of rent at full rate.

Action tried by Humphreys, J.

By a lease dated the 10th October, 1936, the plaintiff leased to the defendant, the proprietress of a school of dancing at Worthing, a house for fourteen years at a yearly rent of £78, payable by instalments of £6 10s. on the eighth day of each calendar month. Those payments amounted to a rent of 30s. a week, and both parties regarded the rent payable as being in fact 30s. a week. The lease provided that the tenant might determine the lease at the end of the first five years by giving six months' previous notice in writing. Owing to the war it became impossible for the defendant to carry on her business, and in 1940 she informed the plaintiff that either he must accept less rent or she must give up her lease, saying that the most she could offer was 15s. a week, that she could make no offer for the settlement of certain arrears of rent then outstanding, that she saw no prospects of an improvement in her business, and that she thought it best that she should give up the lease. The plaintiff replied by his solicitor accepting a reduced rent, but stipulating that if it were not paid regularly it must revert to the 30s. reserved by the lease, and that the reduced payment was not to apply for what the solicitor erroneously called the "option period" of the lease, beginning in October, 1941. The solicitor made that offer, and the defendant accepted it, in ignorance of the true terms of the lease, which were that it continued in being for fourteen years, subject only to the defendant's right to terminate it by previous notice in October, 1941. The defendant accordingly paid rent at 15s. a week regularly until 1941. The plaintiff continued accepting the reduced sum thereafter until conditions having improved, the defendant voluntarily increased her payments to 17s. 6d. and later to £1 a week. With the improved conditions in 1944 she resumed payment of 30s. a week in October. In May, 1945, the plaintiff by his solicitor applied to the defendant for payment of alleged arrears of rent due from October, 1941, to November 1944. The defendant having refused to pay the sum claimed on the ground that 15s. a week had been paid by her by mutual agreement, the plaintiff brought this action.

HUMPHREYS, J., said that it was first argued for the defendant that the agreement made in 1940 for payment of 15s. a week

put an end to the lease at the end of the first five years, so that any claim for arrears at 30s. must fail, and reliance was placed on *Fenner* v. *Blake* [1900] 1 Q.B. 426. That case was not, however, *in pari materia* with the present. Here the plaintiff had simply assumed, on the word of his solicitor, that the lease came to an end after the five years, and the defendant had taken that to be so. The more difficult question was whether, as the defendant contended, the plaintiff was estopped by the agreement made in 1940 from now claiming arrears of rent at a higher rate. In his (his lordship's) opinion, he was. This was what Channell, J., in *Fenner* v. *Blake, supra,* had described as an ordinary case of estoppel. The plaintiff had in effect said to the defendant, "you need not pay more than 15s. a week," probably adding "unless you are able to." That was what the defendant had perfectly reasonably understood him to be saying, and she had acted upon it. The action failed.

COUNSEL: *Lester; Curtis-Raleigh.*

SOLICITORS: *Peachey & Co.*, for *W. G. S. Naunton*, Worthing; *Petch & Co.*, for *Bowles & Stevens*, Worthing.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PARLIAMENTARY NEWS

HOUSE OF LORDS

Read First Time:—

ASSURANCE COMPANIES BILL [H.C.]. [5th February.

INDIA (CENTRAL GOVERNMENT AND LEGISLATURE) BILL [H.L.].

To amend the Government of India Act, 1935, with respect to the qualifications of members of the Governor-General's Executive Council, to extend temporarily the powers of the Indian Legislature to make laws, and to amend subs. (4) of s. 102 of the said Act, as to the effect of laws passed by virtue of a proclamation of emergency. [6th February.

Read Second Time:—

FURNISHED HOUSES (RENT CONTROL) BILL [H.C.]. [5th February.

PATENTS AND DESIGNS BILL [H.L.]. [5th February.

TRUNK ROADS BILL [H.C.]. [5th February.

Read Third Time:—

BANK OF ENGLAND BILL [H.C.]. [6th February.

In Committee.

BUILDING RESTRICTIONS (WAR-TIME CONTRAVENTIONS) BILL [H.C.]. [7th February.

EMERGENCY LAWS (TRANSITIONAL PROVISIONS) BILL [H.C.]. [7th February.

LOCAL GOVERNMENT (FINANCIAL PROVISIONS) BILL [H.C.]. [5th February.

NATIONAL SERVICE (RELEASE OF CONSCIENTIOUS OBJECTORS) BILL [H.C.]. [5th February.

STATUTORY INSTRUMENTS BILL [H.C.]. [7th February.

STRAITS SETTLEMENTS (REPEAL) BILL [H.L.]. [7th February.

HOUSE OF COMMONS

Read First Time:—

HOUSING (FINANCIAL AND MISCELLANEOUS PROVISIONS) BILL [H.C.].

To make fresh arrangements for the making of contributions, grants and loans in connection with the provision of housing accommodation; to provide for matters subordinate to that purpose; to amend the enactments which relate to the making of contributions in respect of housing accommodation; to amend the law relating to the housing accounts of local authorities; and to facilitate the provision of housing accommodation in the Isles of Scilly. [4th February.

HOUSING (FINANCIAL PROVISIONS) (SCOTLAND) BILL [H.C.]. [4th February.

MISCELLANEOUS FINANCIAL PROVISIONS BILL [H.C.].

To extend the powers of the Treasury to raise money under s. 1 of the National Loans Act, 1939, to make provision as to certain obligations arising out of or in connection with the war, to charge certain payments under the War Damage Act, 1943, on the Consolidated Fund, to provide for a temporary increase in the capital of the Civil Contingencies Fund, to amend the Defence Loans Act, 1937, and to increase the salary of the Comptroller and Auditor-General. [6th February.

NORTH-WEST MIDLANDS JOINT ELECTRICITY AUTHORITY PROVISIONAL ORDER BILL [H.C.]. [6th February.

Read Second Time:—

BANBURY CORPORATION BILL [H.C.]. [6th February.

CARDIFF CORPORATION BILL [H.C.]. [6th February.

MINISTRY OF HEALTH PROVISIONAL ORDER (MORTLAKE CREMATORIUM BOARD BILL [H.C.]. [8th February.

NATIONAL INSURANCE BILL [H.C.]. [11th February.

PORTSMOUTH CORPORATION BILL [H.C.]. [6th February.

TEES CONSERVANCY BILL [H.C.]. [8th February.

Read Third Time:—

AGRICULTURE (ARTIFICIAL INSEMINATION) BILL [H.C.]. [8th February.

MINISTERS OF THE CROWN (TRANSFER OF FUNCTIONS) BILL [H.C.]. [8th February.

In Committee:—

INVESTMENT (CONTROL AND GUARANTEES) BILL [H.C.]. [5th February.

MINISTERS OF THE CROWN (TRANSFER OF FUNCTIONS) BILL [H.C.]. [4th February.

QUESTIONS TO MINISTERS

LEGAL AID TO POOR PERSONS

Mr. LEVY asked the Attorney-General if he will now consider raising in proportion to the increased cost of living the figure of £4 a week, which is at present the maximum wage under which an applicant for divorce is eligible for assistance under the Rules of the Supreme Court 1925–43, Ord. 16, rr. 22–31.

The ATTORNEY-GENERAL: Hon. members will recollect that the Rushcliffe Report contains recommendations for an increase in the permissible income limits for the purpose of assistance in the conduct of litigation. The Government have provisionally given general approval to the main principles set out in this report, and, as the House was informed on the 26th October, The Law Society have been asked to prepare a detailed scheme with a view to implementing the proposals in the report.

The preparation of this scheme is now well advanced, but the Government cannot contemplate introducing legislation to give effect to it until they have had an opportunity of considering in detail the final scheme and its financial implications. In any event, I regret that owing to the heavy legislative programme it is unlikely that it would be possible to introduce such legislation this Session. [7th February.

AGRICULTURE: APPEAL TRIBUNALS

Sir H. MORRIS-JONES asked the Minister of Agriculture in relation to appeals from the recommendation of W.A.E.C.s in possession and termination of tenancy cases, what is the constitution of the appeal panels for Wales; and how many of their members have a knowledge of the Welsh language.

Mr. T. WILLIAMS: *Ad hoc* panels will be appointed to hear each appeal or small group of appeals. Each panel will consist of a chairman with legal qualifications and two other members, of whom one will be selected from a list of nominations submitted by the National Farmers' Union and one from a joint list of nominations submitted by the Central Landowners' Association, the Land Agents' Society and the Chartered Surveyors' Institution. So far as Wales is concerned, I believe that three of the five persons, who have accepted my invitation to act as chairman when called upon, are Welsh speaking and also a large proportion of the persons included in the lists put forward by the various organisations. The hon. member may rest assured that where necessary the chairman and one other member acting in a particular case will be Welsh-speaking. [8th February.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 140. **County of Monmouth** (Electoral Divisions) Order. Jan. 25.

No. 156. **Factories.** Operations at Unfenced Machinery (Amended Schedule) Regulations. Jan. 30.

No. 118. **Fur Wages Council** (Great Britain) Wages Regulation Order. Jan. 29.

E.P. 1706/S.70. **Police** (Employment and Offences) (Scotland) (No. 2) Order. Dec. 27.

No. 1702/S.66. Police (Scotland) Regulations. Dec. 27.

E.P. 1704/S.68. Police War Reserve (Scotland) (No. 2) Rules. Dec. 27.

No. 1703/S.67. Police (Women) (Scotland) Regulations. Dec. 27.

No. 35. **Supplies and Services** (Transitional Powers) (Colonies, etc.) Order in Council. Jan. 10.

No. 116. **Toys and Indoor Games** (Maximum Prices and Records) Order. Jan. 21.

No. 108. **Road Haulage Wages** (Amendment) Order. Jan. 26.

E.P. 1705/S.69. **Women's Auxiliary Police Corps** (Scotland) (No. 2) Rules. Dec. 27.

No. 155. **Workmen's Compensation.** Shipping Industry (Pneumoconiosis) Compensation Scheme. Jan. 30.

DRAFT STATUTORY RULES AND ORDERS, 1946

Government of Burma (Shan States Federal Fund) Order. (Published Feb. 5.)

Government of Burma (Governor's Emergency Allowances, Repair of Furnishings) Order. (Published Feb. 5.)

Government of India (High Court Judges) (Amendment) Order. (Published Feb. 5.)

Therapeutic Substances Amendment Regulations. (Published Feb. 4.)

Treasury.

High Court and Court of Appeal. Account of Receipts and Expenditure for 1944–45.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2]

OBITUARY

Mr. J. PIERCE-LEWIS

Mr. John Pierce-Lewis, solicitor, of Rhyl, died on Sunday, 20th January, aged ninety-four. He was admitted in 1891.

Mr. W. SLATER

Mr. William Slater, solicitor, of Blackburn, died on Friday, 1st February, aged fifty-eight. He was admitted in 1913.

THE LAW SOCIETY

SCHOOL OF LAW

A special course of eight classes (two hours each) on book-keeping and trust accounts, in preparation for the examination to be held on the 15th March, will be held at The Law Society's School of Law, on the 5th, 6th, 7th, 8th, 11th, 12th, 13th and 14th March, provided sufficient students give notice to the Principal's secretary by the 1st March of their intention to take the course. The fee will be four guineas.

A course of eight classes on jurisprudence, for the Final LL.D. Examination of the University of London, will be held on Mondays, at 10.30 a.m., beginning on the 25th February. The fee for the course will be three guineas.

NOTES AND NEWS

Honours and Appointments

The King has approved that Sir LIONEL LEONARD COHEN and the Hon. Sir CYRIL ASQUITH, Justices of the High Court of Justice, be appointed Lords Justices of Appeal. His Majesty has also approved the appointment of Mr. FREDERIC AKED SELLERS, M.C., K.C., to be a Judge of the High Court of Justice, King's Bench Division, and of Mr. HENRY WYNN PARRY, K.C., to be a Judge of the High Court of Justice, Chancery Division.

The King has approved the appointment of Colonel ROGER SEWELL BACON, who, since 1942, has been with the Civil Affairs branch of the Army, to be Chief Justice of Gibraltar. Colonel Bacon was called by the Middle Temple in 1923. His Majesty has also approved the appointment of Mr. O. L. BANCROFT, Attorney-General, Bahama Islands, to be Chief Justice of the Bahamas. Mr. Bancroft was called by the Inner Temple in 1910.

Sir GRANVILLE RAM, K.C., has been elected Chairman of the Herts Quarter Sessions, in succession to Judge Sturgess. Mr. Justice Vaisey and Mr. Montague L. Berryman, K.C., were elected Deputy-Chairmen.

Mr. L. H. BAINES, Deputy Clerk of the Peace and Deputy Clerk to the Cumberland County Council, has been appointed Clerk to the Isle of Wight County Council. He was admitted in 1934.

Mr. T. H. E. EDWARDS, solicitor, of Messrs. Tozers, solicitors, of Teignmouth, has been awarded the Legion of Merit (Degree of Legionnaire) by the President of the United States. The citation, which is signed personally by President Truman, states that the award is " for extraordinary fidelity and exceptionally meritorious conduct in the performance of outstanding service." Mr. Edwards served during the war in Coastal Command, and attained the rank of Wing Commander. He was awarded the O.B.E., and was twice mentioned in dispatches. He was admitted in 1926.

Professional Announcement

The partnership hitherto existing between FREDERICK VIVASH ROBINSON, SYDNEY ADAMS and REGINALD CHARLES HARE, under the style of VIVASH, ROBINSON & Co., at 3/4, Clement's Inn, W.C.2 (Telephone: Holborn 4031), and elsewhere, has expired by effluxion of time. The said FREDERICK VIVASH ROBINSON and SYDNEY ADAMS will continue to practise in partnership under the same style and at the same addresses as hitherto. REGINALD CHARLES HARE, having been released from the Army, has set up in practice under the style of REX HARE & Co., at 108A, Cannon Street, E.C.4 (Telephone: Mansion House 5826).

Wills and Bequests

Mr. W. Allen, K.C., Recorder of Newcastle-under-Lyme, left £64,848, with net personalty £45,788.

Mr. S. Cartwright, solicitor, of Eldon Street, E.C., left £38,993, with net personalty £27,893.

Mr. C. M. Cotton, retired solicitor, of Tonbridge, Kent, left £20,895, with net personalty £6,145.

Mr. G. H. Fowler, solicitor, of Brighton, left £33,332, with net personalty £23,172.

REVIEW

Chalmers' Sale of Goods Act, 1893. Twelfth edition. By RALPH SUTTON, K.C., and N. P. SHANNON, of Gray's Inn, Barrister-at-law. 1945. London: Butterworth & Co. (Publishers), Ltd. 17s. 6d. net.

The appearance after fourteen years of a new edition of Chalmers' will be welcomed by the legal profession. It has no rival or substitute, for " Benjamin on Sale " is a classic of a different type, catering for higher needs than those of the work-a-day lawyer. Chalmers' has proved itself the ideally compact and comprehensive *vade mecum* for the advocate in the court and for the lawyer in his office or chambers. Altogether well over a thousand cases are cited, and in many of them a short sentence states their effect. Even in the limited scope of this work much water has passed under the bridges since the last edition. The learned authors have not merely contented themselves with adding references to cases decided since the last edition, but they have eliminated references to cases which did not seem to them helpful and have revised and rewritten many of the notes in the light of more recent decisions. Some 110 additional cases have been inserted. A very welcome and useful addition to the book is the inclusion in Appendix I of the Law Reform (Miscellaneous Provisions) Act, 1934, relating to the recovery of interest. Other new features of the Appendix are the text of the Law Reform (Frustrated Contracts) Act, 1943, and s. 28 of the Finance (No. 2) Act, 1942, relating to the adjustment of rights as to purchase tax between buyer and seller. A fuller note than the mere reference to *Lowe* v. *Norman Wright (Builders), Ltd.* [1944] K.B. 484, would have been useful, but there is much to be said for conciseness in a work of this kind. The extracts from the emergency legislation after the index include Defence Regulation 55, the Price of Goods Act, 1939, the Goods and Services (Price Control) Act, 1941, the Price Control (Regulation of Disposal of Stocks) Act, 1943, and the Prices of Goods (Price Regulated Goods) Order, 1942, with some useful notes of cases. The learned editors modestly claim that theirs is a " workmanlike " edition. We would go further and say that it is one of which the author of the first ten editions, Sir M. D. Chalmers, K.C.B., C.S.I., draftsman of the Act, would have entirely approved.

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1946

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.			Emergency Rota.	Appeal Court I.	Mr. Justice Uthwatt.
Mon.,	Feb.	18	Mr. Jones	Mr. Blaker	Mr. Andrews
Tues.,	,,	19	Reader	Andrews	Jonse
Wed.,	,,	20	Hay	Jones	Reader
Thurs.,	,,	21	Farr	Reader	Hay
Fri.,	,,	22	Blaker	Hay	Farr
Sat.,	,,	23	Andrews	Farr	Blaker

Date.			Group A.		Group B.	
			Mr. Justice Cohen. *Witness.*	Mr. Justice Vaisey. *Non-Witness.*	Mr. Justice Evershed. *Non-Witness.*	Mr. Justice Romer. *Witness.*
Mon.,	Feb.	18	Mr. Hay	Mr. Farr	Mr. Reader	Mr. Jones
Tues.,	,,	19	Farr	Blaker	Hay	Reader
Wed.,	,,	20	Blaker	Andrews	Farr	Hay
Thurs.,	,,	21	Andrews	Jones	Blaker	Farr
Fri.,	,,	22	Jones	Reader	Andrews	Blaker
Sat.,	,,	23	Reader	Hay	Jones	Andrews